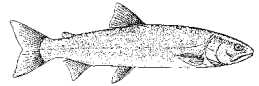


# ENDANGERED SPECIES ACT



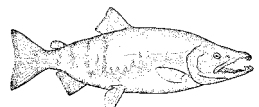
## CHINOOK

Proposed Listing as  
Threatened for Puget Sound



## BULL TROUT

Proposed Listing as  
Threatened for Puget Sound



## CHUM

Depressed; Proposed Listing  
as Threatened for Hood Canal



## SEA-RUN CUTTHROAT

Status Determination  
December 1998



## COHO

Status Determination  
Mid-1999



## STEELHEAD/RAINBOW

At Risk of Future Listing



## SOCKEYE

Depressed; Listing Unlikely



## PINK

Some Runs Extinct;  
Others Still Healthy

Status descriptions are  
for Puget Sound runs.



King County, WA

## THE ENDANGERED SPECIES ACT AND HCPs: A SUMMARY

The purposes of the Endangered Species Act are “to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved, and to provide a program for the conservation of these species.” The Act defines three fundamental terms as follows:

- **Endangered** means a species of fish, animal or plant is “in danger of extinction throughout all or a significant portion of its range”. (For salmon and other vertebrate species, this may include subspecies and distinct population segments.)
- **Threatened** means a species “is likely to become endangered within the foreseeable future”. Regulations for a threatened species may be less restrictive than if it were endangered; the difference is likely to be minor for Puget Sound Chinook salmon.
- **Critical habitat** means “specific geographical areas that are...essential for the conservation and management of a listed species, whether occupied by the species or not”.

Five sections of the Act are of critical importance:

### Section 4: Listing of a species

The National Marine Fisheries Service is responsible for listing Chinook salmon and other sea-going and marine species; the U.S. Fish and Wildlife Service is responsible for listing terrestrial and freshwater aquatic species. The agencies may initiate reviews for listings; citizens may also petition for them. A listing must be made “solely on the basis of the best scientific and commercial data available”. After proposing a listing, agencies receive comment and conduct further scientific reviews for 12 to 18 months, after which they must decide if a listing is warranted. Economic impacts cannot be considered in this decision, but it may include an evaluation of the adequacy of local and state protections. Critical habitat for the species may be designated at the time of listing.

### Section 7: Consultation

Even when a listing has only been proposed, all federal agencies must insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species nor adversely modify its critical habitat. This includes private and public actions that require a federal permit. Once a final listing is made, non-federal actions are subject to the same review, termed a “consultation”. If the listing agency finds that an action will “take” a species (see Section 9 below), it must propose mitigations or “reasonable and prudent” alternatives to the action; if the proponent rejects these, the action cannot proceed.

### Section 9: Prohibition of Take.

It is unlawful to “take” an endangered species, including killing or injuring it or modifying its habitat in such a way that interferes with essential behavioral patterns including breeding, feeding or sheltering.

### Section 10: Permitted Take

Through voluntary agreements with the federal government that provide protections to an endangered species, a non-federal applicant may commit a take that would otherwise be prohibited as long as it is incidental to an otherwise lawful activity (such as developing land or building a road). A “Habitat Conservation Plan” (HCP) is the most likely such agreement that King County may pursue (see opposite side of this page).

### Section 11: Citizen Lawsuits

Civil actions initiated by any citizen can require the listing agency to enforce the Act’s prohibition of taking or to meet the requirements of the consultation process.

## HABITAT CONSERVATION PLANS (HCPs)

As discussed in the summary of the ESA on the opposite page, a non-federal entity (such as a business, landowner or government) may incidentally “take” (harm) a listed species through an approved Habitat Conservation Plan (HCP). In an HCP, a set of actions that protect and benefit a listed species serve as mitigation for takes of that species that are incidental to otherwise lawful activities, such as harvesting trees, constructing roads or permitting development. Through an approved HCP, the applicant receives legal assurance that it can conduct its business without disruption by regulatory action under the ESA. In return, the federal government receives assurance that protection of the species occurs on a more sustained, systematic and cost-effective basis than is possible through individual consultations and enforcement actions under the ESA. HCPs have become widespread, particularly under the Clinton administration, since they were created as an option for non-federal entities in 1982.

### HCPs are approved based on the following criteria:

- Impacts on habitat are minimized and mitigated to the maximum extent practicable;
- The applicant has adequate authority and funding to implement the plan;
- The approved take “will not appreciably reduce the likelihood of survival” of the species; and
- Other criteria determined by the responsible federal agency, which may include consistency with a recovery plan for the species developed by the agency; this would have a goal of reversing the endangered or threatened status of the species, rather than merely not reducing the likelihood of its survival. (NMFS is unlikely to have completed such a plan for Puget Sound Chinook for several years.)

**The legal outcome of an approved HCP is the issuance of an incidental take permit (see Section 10, opposite page).** Recent incidental take permits have been issued for as long as 50 to 100 years, but the length of the permit is subject to negotiation between the applicant and the responsible federal agency. In the scientific and environmental communities, there is growing concern about such long permits, given how little is known with certainty about what is necessary for the survival of most listed species.

**Between the time the final listing decision is made and an incidental take permit is issued, the applicant is fully bound by the ESA:** all actions that might “take” a listed species are subject to federal consultation and regulatory action under Section 9 of the ESA (see opposite page); they are also subject to third party lawsuits seeking such action. However, if the responsible federal agency believes that an applicant is pursuing an HCP in good faith, it may choose to be lenient in applying regulatory restrictions during this period, though it is not required to do so.

**Multi-species HCPs, which typically address whole ecosystems (such as watersheds) are encouraged by the federal government and provide advantages to applicants.** They allow for the incidental take of all species for which they are approved—including species that may not have been listed at the time the permit is issued.

### Some lessons learned from HCPs that have been approved or are under development include:

- Satisfactory HCPs are expensive and time-consuming to develop and are typically even more expensive to implement (a multi-species HCP in San Diego County has taken more than seven years to develop and will cost more than \$400 million over 20 years to implement);
- Key stakeholders must participate in the development of an HCP to ensure their support when the HCP is being considered for approval;
- HCPs must be guided by the best independent science available;
- A strong yet flexible central administration is critical to development of an acceptable HCP;

HCPs should have a long-term outlook but provide opportunities for incremental action.

For more information, check the website at <http://www.salmon.gen.wa.us/> or call the Salmon Helpline at 1-877-SALMON-9